

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-7172

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
No. 75-7172

BROOK HOLLOW ASSOCIATES

Plaintiff - Appellant,

vs.

J. E. GREENE, INC. ET AL

Defendant - Appellee

Appeal from the United States District Court for the District of
Connecticut, at Hartford.

BRIEF FOR APPELLEE

Counsel for Appellee

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I.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals should dismiss this appeal in as much as the Connecticut Supreme Court has acted in such a way as to moot the constitutional issue?

2. Whether the Court should take jurisdiction on the basis of other claims made by the Appellant?

II.

STATEMENT OF THE CASE

A. Nature of the Case and Proceedings in United States District Court

The Appellant brought this action in the United States District Court for the District of Connecticut as an action for a temporary and a permanent injunction and damages as authorized by 42 USC Section 1983 and for a declaratory judgment pursuant to 28 USC Section 2201. Jurisdiction was asserted under 28 USC Section 1343 (3) and (4) and 28 USC Section 2201.

The Appellant claimed that the mechanic's lien statutes in Connecticut are on their face and as they were applied to the Appellant, violative of the due process clause of the Fourteenth Amendment to the United States Constitution.

The Appellant moved for the convening of a three-judge court by the District Court. After consideration of that motion the District Court dismissed the Appellant's complaint for failure to present a substantial question.

B. Statement of Facts

The Appellant is the owner, general contractor and developer of the Brook Hollow Health Care facility located in Wallingford, Connecticut. J. E. Greene, Inc., a Connecticut Corporation, which supplied equipment for the construction of the Appellant's facility, issued a certificate of mechanic's lien for monies owed pursuant to a contract with a subcontractor of the Appellant. The certificate was recorded in the office of the Town Clerk of Wallingford, upon the Land Records of That Town on August 19, 1974, by the Assistant Town Clerk of Wallingford, Appellee Grayce M. Rose.

Subsequent to the recording of the Mechanic's lien, the Appellant provided the Appellee with a surety bond. The Appellee released the mechanic's lien.

III.

ARGUMENT

A. This appeal should be dismissed, since subsequent to the commencement of this action the Connecticut Supreme Court has ruled that the Connecticut Mechanic's Lien Statute was unconstitutional, thus making this appeal moot.

On April 22, 1975, the Connecticut Supreme Court upheld a Superior Court decision and ruled that the Mechanics lien statutes are unconstitutional in "...that the absence of a statutory provision for a hearing for the Defendants at a meaningful time and in a meaningful manner;...has deprived them of their constitutional rights to due process of law as those rights have been recently enunciated by the United States Supreme Court."

Roundhouse Construction Corporation v. Telesco Masons Supplies Company, Inc, et al _____ Conn. _____; 36 Connecticut Law Journal 16 (April 22, 1975). Having so ruled, the issues presented by the Appellant's Appeal have been mooted and the Court of Appeals should dismiss the appeal.

There is no reason for the Federal Court to rule on the constitutionality of a state statute which has already been found unconstitutional by the state's own highest court, as it has been the policy of the Federal Courts to dismiss actions that have become moot. Greater Houston Chapter of A.C.L.U. v Houston Independent School District, 391 F2d 599 (CA Texas, 1968); Morrison Cafeteria Co. of Nashville, Inc. v Johnson 344 F2d 690 (CA Tenn, 1965); US ex rel Eisler v District Director of Immigration and Naturalization of Port of New York 162 F2d 408 (CCA, NY, 1947).

B. As to the Appellant's other claims for relief, these claims are state law issues that should be resolved by the state courts.

In addition to the Appellant's claim for declaratory judgement, the Appellant sought injunctive relief and damages. The determination of such claims involve questions of interpretation of the Roundhouse decision and it is appropriate that the federal court refrain from deciding unsettled questions of State law in that such a decision might conflict with important policies of the state. Furthermore, the court should recognize the final authority of the state court to pass upon such questions. The court should further be mindful of the need for harmonious relations between the state and federal systems justifies abstention. Railroad Com. of Texas v Pullman Co. 312 US 496 (1941). It would be appropriate for the court to dismiss this action under the abstention doctrine as further annunciated in Burford v Sun Oil Co., 319 US 315 (1943).

The application of the Roundhouse decision either prospectively or retroactively should be left to the state's courts. The Appellant could and should appropriately bring an action in the Superior Court for a declaratory judgement under Connecticut General Statute Section 52-29 as to the application of Roundhouse to the issues raised by the Appellant. Spector Motor Services, Inc. v McLaughlin, Tax Commissioner, 323 US 101 (1944).

In a similar case, Lynch v Household Finance Co. 360 F Supp. 720 (DC Conn. 1973), the District Court found Connecticut's garnishment statute unconstitutional for failure to provide a hearing prior to the garnishment. In that case the Court made "...no attempt to delineate or describe the kind of notice that must be given or the type of hearing that must be held." at 723. That responsibility, the court found, rested in the hands of the legislature. In fact, when the legislature did act by the passage of the prejudgment remedy Act, PA 73-431, now Conn. General Statutes Section 52-278a et seq., the legislature did not invalidate garnishments and attachments which had been

Made under the unconstitutional Connecticut Statute but provided for a validation procedure, Conn. General Statute Section 52-278g, which provision has not been subjected to constitutional challenge.

As to the Appellant's claim for damages, since the Appellant has not cited any authority for such a claim, we presume that the Appellant is not seriously pressing the issue.

The claims of the Appellant in this action should be and can more appropriately be determined by the Connecticut courts.

IV.

CONCLUSION

The Court should dismiss the appeal of the Appellant in light of the intervening determination of the Connecticut Supreme Court.

For the reasons stated above, the Appellee requests that this Court dismiss this appeal.

Appellee J. E. Greene, Inc.

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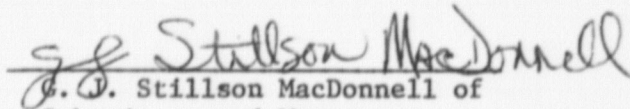
J. E. GREENE, INC. ET AL,
Appellees

July 2, 1975

CERTIFICATION OF SERVICE

This is to certify that two copies of this brief were mailed
via U.S. Mail, postage prepaid, on July 2, 1975, to:

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